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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,122	07/18/2003	Jacques Hubert Olga Joseph Wijenberg	APV31638	2328

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EXAMINER

SAVAGE, JASON L

ART UNIT	PAPER NUMBER
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1775

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,122

Applicant(s)

WIJENBERG ET AL.

Examiner

Jason L. Savage

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 16-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7-18-03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date See Continuation Sheet.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

Continuation of Attachment(s) 3. Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :20030718, 20031031, 20040317.

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Election/Restrictions

Claims 16-58 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7-6-06.

Information Disclosure Statement

The references drawn to Dockus (US 4,388,159) and Benmalek (US 5,643,434) on the IDS filed 7-18-03 were lined through since they had also been cited and initialed on the IDS filed 3-7-04.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 5-15 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 10/621,601 (see US 2004/0115468). Although the conflicting claims are not identical, they are not patentably distinct from each other because although the present claims recite to the nickel-tin alloy layer as being a diffusion layer, the claims of 10/621,601 recite a nickel-tin alloy layer. Since the claims are drawn to an article, not the method of making, the limitation that the nickel-tin alloy is a diffusion layer does not provide a patentable distinction the claims of 10/621,601.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 5-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wijenberg et al. (US 2003/0042146).

Wijenberg teaches a brazing sheet comprising a aluminum core, an aluminum-silicon clad layer, a bonding layer of zinc and an outersurface comprising a nickel-tin alloy (par. [0050]). Wijenberg further teaches that silicon content in the aluminum-silicon clad layer is between 2-18 weight % and preferably between 7-14 weight % (par/

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[0024]). Regarding the limitation that the outersurface nickel-tin alloy layer is a diffusion layer, the claims are drawn to an article, not the method of making. Absent a teaching of the criticality or showing of unexpected results from the nickel-tin alloy being formed by diffusion as claimed, it would not provide a patentable distinction over the brazing sheet having the nickel-tin alloy of Wijenberg.

Regarding claim 5, Wijenberg teaches the nickel-tin layer preferably has a thickness of 0.05-0.5 microns (par. [0026]).

Regarding claims 6-9, Wijenberg teaches the bonding layer is zinc having a thickness of between 0.03-0.35 microns which overlaps the ranges claimed.

Regarding claims 10-11, Wijenberg teaches that the core workpiece may be an aluminum alloy such as alloys of AA3xxx- and AA6xxx-series alloys (par. [0024]).

Regarding claims 12-13, although Wijenberg does not teach the Sn content or mol-ratio to Ni, given the amount of other alloying elements such as Bi being relatively low in comparison to the Ni content (par. 0029-0030)), it would have been obvious to one of ordinary skill in the art to have formed a nickel-tin alloy having a relatively low nickel to tin mol-ratio.

Regarding claims 14 and 15, since Wijenberg teaches the use of the same materials for the different layers as those claimed by Applicant, one would expect the brazing sheet to have an overall composition breakdown similar to that claimed. Furthermore, since Wijenberg has the same composition as that claimed by Applicant, one would expect it to have a similar post-braze corrosion life.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason L. Savage whose telephone number is 571-272-1542. The examiner can normally be reached on M-F 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jason Savage
10-1-06



JENNIFER MCNEIL
SUPERVISORY PATENT EXAMINER
11/21/06